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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,827	08/20/2003	Spencer B. Dick	PAI 306A	7663
23581	7590	05/07/2010		
KOLISCH HARTWELL, P.C. 200 PACIFIC BUILDING 520 SW YAMHILL STREET PORTLAND, OR 97204			EXAMINER BAHTA, KIDEST	
			ART UNIT 2123	PAPER NUMBER
			MAIL DATE 05/07/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/645,827	Applicant(s) DICK ET AL.	
	Examiner KIDEST BAHTA	Art Unit 2123	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 20-35 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 and 26-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-25 and 33-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/18/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-11, 26-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group I and Group III, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 2/01/10.

Claims 18-19 are canceled.

Claims 12-25 (Group II) and newly added claims 33-35 presented for examination.

Specification

2. The abstract in this case are extremely concise. Examiner would prefer that the applicant expand the title and abstract to more clearly show what differentials this application from other documents and to clearly show the subject matter. If this is not done by applicant, it will be done by the examiner upon allowance of this case.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. 5. Claims 1-13 and 16-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 12 recites the limitation "the optical measuring device" in line 7. There is insufficient antecedent basis for this limitation in the claim.

Applicant should make all the necessary corrections to eliminate the 35 USC § 112 second paragraph problems and place the claims in a proper format.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory

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double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 12-17, 20-25 and 33-35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,631,006. Although the conflicting claims are not identical, they are not patentably distinct from each other because both disclose detector (an optical measuring device) and a material processing for a wood cutting process.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-25 and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greten et al. (US 5,042,341) in view of Blaine et al. (US 5,444,635).

Regarding claim 12, 14, 17 and 21, Greten discloses,

12. A system for in-line processing of a material comprising

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a detector configured to produce data corresponding to a particular position at which a light beam is manually deflected to the detector (column 6, lines 9-23, column 8, lines 1-8),

a controller operatively connected to the optical measuring device and the pusher mechanism, wherein the controller is configured to operate the pusher mechanism based on the data (column 3, lines 62-67; Fig. 4-11).

14. A system for controlling processing of a material comprising

an optical measuring device configured to create data corresponding to a particular position at which a light beam is deflected manually (column 11, lines 35-55),

a material processing station (column 7, lines 44-51), and

a controller operatively connected to the optical measuring device and the material processing station, wherein the controller is configured to control processing of the material based on the data (column 3, lines 62-67; Fig. 4-11).

17. A system for controlling in-line processing of a plurality of articles comprising

a data input station for input of first and second processing data for respective first and second articles by manual placement of an object in a light beam (Abstract),

a controller operatively connected to the data input and material processing stations and configured to control processing of the first article based on the first processing data while the second processing data is input for the second article (Fig. 4-11).

21. A system for controlling in-line processing of an article comprising

a data input station for input of processing data for an article by manual placement of an object in a light beam (column 7, lines 3-20),

a controller operatively connected to the data input and material processing stations and configured to control processing of the article based on the processing data (column 8, lines 63-67).

Greten fails to disclose a signal mechanism configured to generate at least one of an audible signal and a visible signal indicating creation of the data and a material processing station defining a processing line and configured to receive the article from the data input station by movement of the article at least substantially perpendicular to the processing line, and a material processing station including a pusher mechanism configured to position the material for processing.

Blaine discloses a signal mechanism configured to generate at least one of an audible signal and a visible signal indicating creation of the data (column 4, lines 1-12), a material processing station defining a processing line and configured to receive the article from the data input station by movement of the article at least substantially perpendicular to the processing line, and a material processing station including a pusher mechanism configured to position the material for processing (Fig. 3A - Fig. 4).

It would have been obvious to a person of ordinary skill in the art at the time of invention was made to modify the teachings of Greten with the teachings of Blaine because it can be easily retrofit to existing manual or semiautomatic sawing systems and achieve a substantial efficiency at a cost effective price. The invention need not be

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retrofit to existing systems, but can also be provided as a cost effective new sawing system.

Regarding claims 13, 15-16, 23, 33-35, Greten discloses,

13. The system of claim 12, wherein the particular position is disposed on a data input line defined by the light beam, and wherein movement of the pusher mechanism defines a processing line at least substantially parallel to the data input line (column 7, lines 21-43).

15. The system of claim 14, wherein the data relates to a structural aspect of the material (column 7, lines 28-29).

16. The system of claim 14, wherein the data relates to system operation information that does not describe structural aspects of the material (column 7, lines 28-29). .

23. The system of claim 21, wherein the material processing station is positioned so that a person can manually move the article from the data input station to the material processing station while the feet of the person remain stationary (column 6, lines 53-67).

33. (New) The system of claim 17, wherein the controller also controls operation of the saw when a wood piece has been pushed to an appropriate location along the processing axis (column 12, lines 22-35).

34. (New) The system of claim 17, wherein the saw is operated manually when a wood piece has been pushed to an appropriate location along the processing axis (Fig. 18).

35. (New) The system of claim 17, wherein the marking station includes an optical measuring device configured for inputting defect location data to the controller (column 6, lines 22-52)

Regarding claims 20, 22, and 24-25, Blaine discloses,

20. The system of claim 17, wherein the material processing station defines a processing line, and wherein the material processing station is configured to receive the first article from the data input station by movement of the first article at least substantially perpendicular to the processing line.

22. The system of claim 21, wherein the controller has access to a cut list and is configured to optimize processing of the article according to the cut list (Fig. 3A).

24. The system of claim 21, wherein the material processing station is configured to be generally in front of or behind the data input station in relation to a person operating the system (column 4, lines 54-63).

25. The system of claim 21, wherein the controller is configured to store processing data input for two or more articles, and wherein the material processing station is configured to sequentially process the two or more articles (Fig. 3A).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kidest Bahta whose telephone number is 571-272-3737. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Rodriguez can be reached on 571-272-3753. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Kidest Bahta/

Primary Examiner, Art Unit 2123